IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL., Plaintiff, v. DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, INC.; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE, INC.; REPUBLICAN NATIONAL COMMITTEE; and NATIONAL REPUBLICAN SENATORIAL COMMITTEE, Defendants.	§ § § § § § § § § § § § § § § § § §	CASE NO. 3:10-CV-0346

RECEIVER'S RESPONSE TO REPUBLICAN COMMITTEE DEFENDANTS' PARTIAL MOTION TO DISMISS UNDER RULE 12(b)(6)

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Receiver Ralph S. Janvey (the "Receiver") files this Response to the Republican Political Committee Defendants' (the "Defendants")[1] Partial Motion to Dismiss Under Rule 12(b)(6)[2] and respectfully shows the Court as follows:

SUMMARY

Section 24.010 of the Texas Uniform Fraudulent Transfer Act ("TUFTA") states that for claims asserted under Section 24.005(a)(1) of the Act, *i.e.*, claims based on transfers made "with actual intent to hinder, delay, or defraud any creditor of the debtor," a claimant must bring his cause of action "within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant." TEX. BUS. & COMM. CODE § 24.010(a)(1) (Vernon 2009). The claimant here is the Receiver, and the Defendants cannot show, and have not even attempted to show, that, as a matter of law, the Receiver failed to bring this lawsuit within one year after the Receiver discovered or could reasonably have discovered his claims.

Instead, the Defendants argue that the Receiver's claims are barred because the vaguely identified "Stanford Entities" knew of the fraudulent transfers at issue at the time the transfers were made and, thus, that the Receiver's claims were extinguished even before the Receiver was appointed. The Defendants cite no case that supports their novel theory, and the Receiver has found none. Quite to the contrary, the Defendants' theory is at odds with numerous federal cases in which courts have given receivers the benefit of the UFTA discovery rule in the receivers' prosecution of fraudulent transfer claims.

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[1] The "Defendants" refers to the Republican National Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee.

[2] At the Receiver's request, the Republican Committee Defendants agreed to a 2-week extension of the Receiver's deadline to respond to the Republican Committee Defendants' Motion to Dismiss, from April 21, 2010 to May 5, 2010. Pursuant to that agreement, the Receiver hereby files this response.

Further, the Defendants have failed to point to any facts in the complaint that establish as a matter of law that any Stanford entity, much less all of them, knew about the fraudulent nature of the transfers at issue more than one year before this lawsuit was filed. Pursuant to the adverse domination doctrine and settled agency law, even the entity that actually made the transfers at issue is not charged with knowledge of the transfers' fraudulent nature, where the fraud was carried out by individuals acting adversely to the entity's interests.

Finally, the Court should reject the Defendants' attempt to support their motion to dismiss by arguing that claims the Receiver has not asserted are time-barred. The Court cannot dismiss claims that have not been pled, and the Court should decline the Defendants' invitation to issue advisory rulings regarding such claims.

For these reasons, the Court should deny the Defendants' motion to dismiss.

FACTUAL BACKGROUND

Allen Stanford ("Stanford"), James Davis ("Davis"), and others operated an elaborate Ponzi scheme to defraud thousands of investors of billions of dollars. (*See* Compl. at ¶¶1, 28.) The engine of the fraud was the sale of fraudulent certificates of deposit. (*See id*. at ¶¶2, 19.) Revenue from these sales generated substantially all of the income for Stanford, Davis, Stanford Financial Group ("SFG"), and the many related Stanford entities. (*See id*. at ¶2.) The revenue from these sales was not used for any proper purpose, but instead was misappropriated by Stanford and others, and was principally used for Allen Stanford's personal benefit. (*Id*. at ¶24.)

Between 2000 and 2008, Stanford and SFG distributed more than $450,000 of fraudulently-obtained investor money to the Republican National Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee. (*See* *id*. at ¶37; Doc. 1-3 at 4-5.) The payments to the Defendants were made with actual intent to hinder, delay, and defraud creditors. (*See* Compl. at ¶¶36-37.)

The Court has appointed the Receiver to act as the receiver for the assets of Stanford, Davis, SFG, Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, Laura Pendergest-Holt, the Stanford Financial Group Bldg., Inc., and all entities the foregoing persons and entities own or control (the "Receivership Assets"). (*Id*. at ¶11.) Further, the Court has ordered the Receiver to take control of all Receivership Assets in order to make an equitable distribution to claimants injured by the massive fraud orchestrated by Stanford, Davis, and others. (*Id*. at ¶1.) Pursuant to this authority, the Receiver filed this lawsuit to recover the investor money that was improperly provided to the Defendants. (*See id*. at ¶32.)

LEGAL STANDARD

When considering a 12(b)(6) motion, the Court "accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (internal quotations omitted). "A claim cannot be dismissed under rule 12(b)(6) unless the plaintiffs would not be entitled to relief under any set of facts or any possible theory that [they] could prove consistent with the allegations in the complaint." *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007) (internal quotations omitted). "The issue is not whether the plaintiffs will ultimately prevail, but whether they are entitled to offer evidence to support their claims." *Id.* at 280-81.

ARGUMENT & AUTHORITIES

I. The Receiver's fraudulent transfer claims pursuant to Section 24.005(a)(1) are not time-barred.

A. Section 24.005(a)(1) only requires that the Receiver assert his fraudulent transfer claims within one year of when he discovered or reasonably could have discovered the claims.

For claims under Section 24.005(a)(1), the TUFTA provides that a claimant must bring his cause of action "within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant." TEX. BUS. & COMM. CODE § 24.010(a)(1). The statute does not define "could reasonably have been discovered," so courts have relied on the traditional, common law discovery rule when interpreting and applying this provision. *See, e.g.*, *Cadle Co. v. Wilson*, 136 S.W.3d 345, 351 (Tex. App.—Austin 2004, no pet.) ("Although we note that the supreme court's discovery-rule analysis has focused on whether the discovery rule is available under the common law—whereas here, the discovery rule is explicitly available by statute—the court's 'inherently undiscoverable' analysis, which focuses on a plaintiff's exercise of reasonable diligence, is relevant to the statutory issue here of when this transfer *could reasonably have been discovered*.") (emphasis in original) (citing TEX. BUS. & COMM. CODE § 24.010(a)(1)); *Duran v. Henderson*, 71 S.W.3d 833, 839 (Tex. App.—Texarkana 2002, pet. denied) ("[W]e find it helpful to analogize to the discovery rule."); *see also Crook v. Johnston*, 93 S.W.3d 263, 271 (Tex. App.—Houston [14th Dist.] 2002, pet. denied) ("issue of material fact about when Receiver discovered, or in the exercise of reasonable diligence should have discovered, the allegedly fraudulent transfer").

Therefore, the Receiver was entitled to assert his claims against the Defendants up to one year after he discovered or reasonably could have discovered such claims. *See, e.g., Wing* *v. Kendrick*, No. 2:08-CV-01002-DB, 2009 WL 1362383, at *3 (D. Utah May 14, 2009) (holding, with respect to UFTA claim, that the "discovery rule generally applies in cases involving Ponzi scheme entities that have been placed in the hands of an equity receiver because the fraudulent nature of the transfers can only be discovered once the Ponzi operator has been removed from the scene."). When the Receiver could have reasonably discovered the transfers to the Defendants is a question of reasonable diligence, which is ordinarily "a question of fact for the jury." *See Duran*, 71 S.W.3d at 839 ("Unless the evidence is such that reasonable minds may not differ as to its effect, the question of whether a party has exercised diligence in discovering fraud is for the fact finder."). Accordingly, the Court cannot determine the issue as a matter of law on a motion to dismiss.

B. The Receiver is not charged with the knowledge of the "Stanford Entities."

The Defendants do not argue that the Receiver knew or reasonably should have known about his claims more than a year before he filed it. Instead, the basic premise of the Defendants' motion is that a receiver can never take advantage of the one-year discovery rule because a receiver stands in the shoes of the entities he represents, and the entities he represents necessarily know of any fraudulent transfers at the time the transfers are made. Thus, the Defendants argue, the entities and, by imputation, the receiver, know of the fraudulent transfers at the time the transfers occur, which causes the one-year discovery period to begin running immediately from the date of the transfers. The Defendants' overly simplistic argument is flawed.

1. Federal courts have applied the discovery rule by analyzing the receiver's knowledge—not the knowledge of the entities in receivership.

First, the Defendants have cited no case holding that the one-year discovery rule period for a receiver's fraudulent transfer claim is triggered by the receivership entity's knowledge of the fraud. To the contrary, courts routinely determine the timeliness of a receiver's fraudulent transfer claim based on the one-year discovery period, despite the fact that the receivership entities arguably had "knowledge" of fraudulent transfers more than one year before the receiver's appointment. *See, e.g.*, *Wing*, 2:08-CV-01002-DB, 2009 WL 1362383, at *3 (addressing claim that UFTA's discovery rule barred receiver's claim, "[t]he discovery rule generally applies in cases involving Ponzi scheme entities that have been placed in the hands of an equity receiver because the fraudulent nature of the transfers can only be discovered once the Ponzi operator has been removed from the scene."); *Warfield v. Carnie*, No. 3:04-CV-633-R, 2007 WL 1112591, at *14 (N.D. Tex. Apr. 13, 2007) (applying Washington UFTA, holding "the statute of limitations does not begin to run when the mere transfer itself is discovered. Instead, a claim under § 19.40.091 accrues upon discovery of the fraudulent nature of the conveyance.") (internal citations omitted); *Quilling v. Cristell*, No. 304CV252, 2006 WL 316981, at *6 (W.D.N.C. Feb. 29, 2006) (applying UFTA discovery rule, "while Gilliland remained in control of the Gilliland Entities, the fraudulent transfers were concealed and could not reasonably be discovered.").

2. The Receiver is not limited to standing in the shoes of the entities in receivership.

Second, the Defendants' legal premise—that the Receiver can only assert claims of the entities in receivership—is incorrect. In fact, courts have long held that receivers are permitted to assert fraudulent transfer claims *on behalf of creditors*. *See McCandless v. Furlaud*, 296 U.S. 140, 159, 56 S. Ct. 41, 47 (1935) ("If the shareholders and the directors had combined with the promoters to despoil the corporation and defeat the remedies of creditors by a gift of half the assets, the gift could have been anulled either by the creditors directly or in their behalf by a receiver."); *SEC v. Cook*, No. CA 3:00-CV-272-R, 2001 WL 256172, at *2 (N.D. Tex. Mar.

8, 2001) ("[W]hile the debtor would not be entitled to 'set aside a transfer in fraud of his creditors . . . the receiver acting for the creditors may attack it.' . . . Given the foregoing exception, the Court holds that the Receiver has standing to sue to avoid fraudulent transfers on behalf of the creditors of Dennel."); *see also McGinness v. United States*, 90 F.3d 143, 146 (6th Cir. 1996) ("Upon his appointment, the receiver succeeded to the rights of not only the debtor, but also the creditor."); *cf. Wing v. Hammons*, No. 2:08-CV-00620, 2009 WL 1362389, at *3 (D. Utah May 14, 2009) ("a receiver in a Ponzi case *is* defined as a creditor for the purposes of establishing standing" (emphasis in original)).[3]

Because the Receiver is entitled to represent the interests of creditors with respect to fraudulent transfer claims, whether any putative fraudulent transfer claim by the transferors, *i.e.*, Stanford and SFG,[4] would be time-barred is simply not relevant to the question of whether the Receiver's claims—asserted on behalf of creditors[5]—are time-barred.

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[3] It has also been established in cases in the Fifth Circuit and in Texas that, in addition to the claims of the entities in receivership, a receiver can assert claims belonging to the shareholders and creditors of such entities. *See Meyers v. Moody*, 693 F.2d 1196, 1206 (5th Cir. 1982) (analyzing standing of receiver appointed pursuant to Alabama law by reference to the law of forum state (Texas) and stating, "Moody also argues that Receiver did not have standing to sue on behalf of Empire's shareholders, policyholders or creditors. The law in Texas is to the contrary. . . . Moody's challenges to plaintiff's standing are without merit."); *Fla. Dept. of Ins. v. Chase Bank of Tex. Nat'l Assoc.*, No. CIV.A. 3:99CV1254G 2000 WL 36065, at *4, 7 (N.D. Tex. Jan. 14, 2000) (rejecting the argument that the receiver lacked standing because he "stands in the shoes" of the entity in receivership and "find[ing] that, under Texas law and as a matter of public policy, the receiver here has standing to bring its claims against Chase on behalf of [the entity in receivership's] shareholders"); *Cotten v. Republic Nat'l Bank of Dallas*, 395 S.W.2d 930, 941 (Tex. Civ. App.—Dallas 1965, writ ref'd n.r.e.) ("Certainly a receiver . . . has a right to maintain a suit which is necessary to preserve the corporation's assets and to recover assets of which the corporation has been wrongfully deprived through fraud. In such a suit the receiver may be said to sue as the representative of the corporation and its creditors, stockholders, and policyholders . . . ."); *Guardian Consumer Fin. Corp. v. Langdeau*, 329 S.W.2d 926, 934 (Tex. Civ. App.—Austin 1959, no writ) ("acknowledging the general rule that 'the receiver has not greater powers or authority than' the entity in receivership but holding that the 'only exception to the general rule is when the receiver acts to protect innocent creditors of insolvent corporations in which instance the receiver acts in a dual capacity, as a trustee for both the stockholders and the creditors, and as trustee for the creditors he can maintain and defend actions done in fraud of creditors even though the corporation would not be permitted to do so'").

[4] (*See* Doc. 1-3 at 4-5.)

[5] Even if he were limited to asserting the claims of receivership entities, the Receiver's claims still would not be barred. The Defendants' argument is that the transferors are charged with knowledge of the transfers at the time they made them. The transfers at issue, however, were made only by Stanford and SFG. (*See* Doc. 1-3 at 4-5.) As to Stanford, the Receiver is not asserting any fraudulent transfer claim belonging to Stanford, as Stanford cannot

C. The doctrine of adverse domination tolled the start of the discovery period until the Receiver became aware, or reasonably could have become aware, of the fraudulent nature of the transactions at issue.

Federal courts have recognized that the doctrine of adverse domination applies to toll limitations on a Ponzi scheme receiver's fraudulent transfer claim. *See, e.g., Quilling v. Cristell*, No. Civ. A. 304CV252, 2006 WL 316981, at *6 (citing principle of adverse domination). Without citing any cases directly on point, the Defendants argue that the adverse domination doctrine cannot apply to the Receiver's claims because the TUFTA limitations provision is a statute of repose. The Defendants also argue that, if the adverse domination doctrine applies, the tolling period ends instantly upon the appointment of the receiver, and, thus, that the Receiver's claims were time-barred three days before the Receiver filed this lawsuit. Both arguments are flawed.

As to the first argument, the case law cited by the Defendants is inapplicable where, as here, the statute at issue contains an exception to the strict repose deadline. Unlike the statute in *Galbraith*, in which the legislature evinced a clear intent not to create any exception to

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seek to recover transfers he voluntarily made. *See, e.g., Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995) ("The rule is that the maker of the fraudulent conveyance and all those in privity with him—which certainly includes the corporations—are bound by it."). However, the Receiver represents numerous Stanford entities with claims against Stanford (the individual) based on the fact that Stanford unlawfully caused the entities to divert their assets to unauthorized purposes. *See, e.g., Cotten*, 395 S.W.2d at 941 ("Certainly a receiver . . . has a right to maintain a suit which is necessary to preserve the corporation's assets and to recover assets of which the corporation has been wrongfully deprived through fraud. In such a suit the receiver may be said to sue as the representative of the corporation and its creditors, stockholders, and policyholders . . . ."). As a consequence, the Receiver directly represents Allen Stanford's creditors. *See* TEX. BUS. & COMM. CODE §§ 24.002(3), 24.002(4) (Vernon 2009) (defining "creditor" to include "a person . . . who has a claim" and "claim" to mean "a right to payment or property, whether or not the right is reduced to a judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured"). The Defendants have not shown, and cannot show at the motion to dismiss stage, that the Stanford entities were aware of the fraudulent nature of Stanford's transfers to the Defendants. *See Cadle Co. v. Wilson*, 136 S.W.3d 345, 350 (Tex. App.—Austin 2004, no pet.) (holding that for the purposes of applying the discovery rule under the TUFTA, the question is not whether the claimant knew about the transfers but is instead whether the claimant knew of their fraudulent nature).

Similarly, the Receiver is entitled to assert claims on behalf of the many Stanford entities who have claims against, or who are owed debts by, SFG. The Defendants have not shown, or even made any attempt to show, that any entity other than SFG had knowledge of the fraudulent transfers at issue at any time before the Receiver did. Accordingly, the Receiver is entitled to assert fraudulent transfer claims on behalf of any of the Stanford entities other than SFG.

the strict repose time period, Section 24.005(a)(1) claims are subject to a statutory discovery rule. *Cf. Methodist Healthcare Sys. of San Antonio, Ltd. v. Rankin*, ___ S.W.3d ___, 2010 WL 852160, at *2 (Tex. 2010) ("[T]he key purpose of a repose statute is to eliminate uncertainties under the related statute of limitations and to create a final deadline for filing suit that is not subject to any exceptions, *except perhaps those clear exceptions in the statute itself*." (emphasis added)).

Accordingly, the courts are left to determine under what circumstances a fraudulent transfer claimant—in this context, a corporation subject to adverse domination—knew or reasonably could have known about its claim. This is a question of statutory interpretation—not a question of imposing a judicially created exception to an otherwise strict repose deadline. *Cf. Duran*, 71 S.W.3d at 839 ("[W]e find it helpful to analogize to the discovery rule."). Pursuant to the recognized adverse domination doctrine, the corporation does not become aware of its claim until the wrongdoers are removed from the scene. *See, e.g., Quilling v. Cristell*, No. Civ. A. 304CV252, 2006 WL 316981, at *6; *Wing*, No. 2:08-CV-01002-DB, 2009 WL 1362383, at *3; *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995).[6] The application of adverse domination here simply gives effect to the discovery rule embedded in the statute. *See In re*

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[6] The "adverse interest" doctrine, which is also applicable in Texas and which is not a tolling doctrine and thus not subject to the Defendants' arguments about the nature of a statute of repose, leads to the same result. SFG, as an entity, can only act through natural persons, and, as such, one or more natural persons, acting with fraudulent intent, caused SFG to make the transfers at issue. Because those transfers were made with the intent to defraud creditors, the individuals who caused the transfers to be made were acting adversely to SFG. *Resolution Trust Corp. v. Acton*, 49 F.3d 1086, 1090 (5th Cir. 1995) (interests adverse when "directors have been active participants in wrongdoing or fraud"). Where an agent acts adversely to his principal, the principal is not charged with the knowledge of the agent's acts. *See Askanase v. Fatjo*, 828 F. Supp. 465, 470 (S.D. Tex. 1993) ("imputation turns on whether the agent was acting for or against the principal's interests; knowledge acquired by an agent acting adversely to his principal is not attributable to the principal"); *Arabesque Studios, Inc. v. Academy of Fine Arts Int'l*, 529 S.W.2d 564, 568 (Tex. Civ. App.—Dallas 1975, no writ) ("The knowledge of an agent cannot be imputed to a principal if the agent has a personal adverse interest in not revealing it."). Thus, SFG did not "know" of the fraudulent transfers, either at the time the transfers were made, or at any time until someone without an interest adverse to SFG discovered their fraudulent nature. Nothing in the Defendants' motion to dismiss establishes as a matter of law that anyone acting in SFG's interest knew of the fraudulent transfers at issue more than a year before the Receiver filed this civil action.

Reading Broad., Inc., 390 B.R. 532, 553 (Bankr. E.D. Pa. 2008) ("The tolling doctrine of 'adverse domination' has been described as 'merely a corollary of . . . [the] discovery rule, applied in the corporate context.'"). Accordingly, application of the adverse domination rule is not inconsistent with the idea that the limitations period in the TUFTA is actually a statute of repose.

As to the second argument, the tolling period does not end instantly upon removal of the adverse parties, as the Defendants contend. Instead, the tolling period ends once disinterested parties gain control of the corporation and "discover or are put on notice of a cause of action." *Askanase v. Fatjo*, 828 F. Supp. 425, 471 (S.D. Tex. 1993); *see also FDIC v. Nathan*, 804 F. Supp. 888, 894 (S.D. Tex. 1992) ("FDIC cites Texas and federal law which holds that while culpable individuals continue to have superior power over a corporation, limitations is tolled until a majority of disinterested directors discover or are put on notice of a cause of action."). The *FDIC v. Dawson* case, cited by Defendants, does not hold otherwise. 4 F.3d 1303 (5th Cir. 1993). In fact, the *Dawson* court expressly recognized that, under Texas law, the adverse domination tolling period continues to run until disinterested directors have "notice" of a claim. *Id*. at 1310 (citing *Allen v. Wilkerson*, 396 S.W.2d 493, 500 (Tex. Civ. App.—Austin 1965, writ ref'd n.r.e.).[7]

If the rule were otherwise, a party desiring to commit fraud could avoid liability by simply hiding the fraud sufficiently well so as to make it undiscoverable until the expiration of the limitations period. That would defeat the purpose of the adverse domination rule, which is

[7] The Defendants are presumably relying on *Dawson*'s quotation of a California opinion that stated, "it is generally held that an action *for fraud* committed against a corporation is tolled for the period that those responsible for the fraud remain in control of the corporation." *FDIC v. Dawson*, 4 F.3d 1303, 1312 (5th Cir. 1993). Leaving aside that the California court's statement is hardly an express holding that the tolling period ends instantly upon the removal of the defrauding parties, the outcome in *Dawson*, like in this case, was controlled by Texas law, and *Dawson* concluded that Texas law provided for continuation of the tolling period until disinterested directors acquired notice of the claim at issue. *See id*. at 1310.

essentially just a corollary of the discovery rule. *See, e,g., In re Reading Broadcasting, Inc.*, 390 B.R. at 553.

Because the Defendants have not established as a matter of law that the Receiver discovered or was put on notice of his claims more than a year before he filed this lawsuit, the Receiver's claims are not time-barred.

II. The Receiver has only asserted claims pursuant to Section 24.005(a)(1) of the TUFTA; thus, Defendants' arguments with respect to other sections of the TUFTA are moot and do not support dismissal.

The Defendants also argue that the Receiver's claims under Sections 24.005(a)(2), 24.006(a), and 24.006(b) are time-barred, pursuant to Sections 24.010(a)(2) and (a)(3) of the TUFTA. (Br. in Support of Mot. to Dismiss at 5-6.) The Receiver, however, has not pled any claims under Sections 24.005(a)(2), 24.006(a), or 24.006(b). Paragraph 36 of the Receiver's Original Complaint clearly states the basis for his cause of action: "Stanford, Davis, and the Stanford Financial Group made the payments to the Committee Defendants with *actual intent to hinder, delay, or defraud creditors*; as a result, the Receiver is entitled to the disgorgement of those payments." (Compl. ¶36 (citing TEX. BUS. & COMM. CODE § 24.005(a)) (Vernon 2009) (emphasis added).) This language tracks exactly the language in Section 24.005(a)(1), which defines a fraudulent transfer as one made "with actual intent to hinder, delay, or defraud any creditor of the debtor." TEX. BUS. & COMM. CODE § 24.005(a)(1); *see also Quilling v. Gilliland*, Cause No. 3-01-CV-1617, 2002 WL 373560, at *2 (N.D. Tex. March 6, 2002) ("[I]ntent to hinder, delay or defraud is established by the mere existence of the Ponzi scheme."). Because the Receiver has not pled any cause of action under Sections 24.005(a)(2), 24.006(a), or 24.006(b) of the TUFTA, there is no such cause of action to dismiss, and it is neither necessary nor appropriate to ask the Court to issue any kind of advisory opinion with respect to claims the Receiver has not even asserted. *See SEC v. Box*, 721 F.2d 134, 136 (5th Cir. 1983) ("In essence, both the district court and this court have been asked to render an advisory opinion on pleadings, or perhaps on a set of facts, not before us. We decline to do so.").

CONCLUSION & PRAYER

For the foregoing reasons, the Receiver respectfully requests that the Court deny the Defendants' Partial Motion to Dismiss Under Rule 12(b)(6). The Receiver further requests any further relief to which he may be entitled.

Dated: May 5, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On May 5, 2010, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. I hereby certify that I will serve the Democratic Senatorial Campaign Committee ("DSCC"); the National Republican Congressional Committee ("NRCC"); the Democratic Congressional Campaign Committee ("DCCC"); the Republican National Committee ("RNC"); and the National Republican Senatorial Committee ("NRSC") individually or through their counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

/s/ Kevin M. Sadler
Kevin M. Sadler